

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

THRIVEST SPECIALTY FUNDING, LLC	:	
	:	
Plaintiff,	:	CIVIL ACTION
	:	No. 18-4764
v.	:	
TOBY L. WRIGHT,	:	
Defendant.	:	

ORDER

AND NOW, this 5th day of June, 2019, it is **ORDERED** that the Amended Petition to Compel Arbitration (ECF No. 11) and the motion to compel arbitration of the Counterclaim¹ (ECF No. 13) are **GRANTED**.² Accordingly, this action is **STAYED** in favor of arbitration. The parties must advise the Court of the status of this action upon completion of arbitration.

¹ Thrivest titled this motion a “Motion to Dismiss Counterclaim or, In the Alternative, to Compel Arbitration.” Thrivest argued that this Court lacked subject matter jurisdiction because the dispute is governed by an arbitration agreement. As Thrivest conceded at oral argument, however, the Court exercises diversity jurisdiction over the entire action pursuant to 28 U.S.C. § 1332.

² The parties dispute the validity and enforceability of their Non-Recourse Finance Transaction, Sales and Purchase Agreement #2 (the “Agreement”). Thrivest moves to compel arbitration of the dispute pursuant to 9 U.S.C. § 4 of the Federal Arbitration Act because the Agreement contains an arbitration provision. Wright contends that the Agreement is void *ab initio*. He further contends that under Pennsylvania law the agreement to arbitrate is not severable from the remainder of the void contract and therefore, it cannot be enforced. Wright’s argument is directly at odds with the following three propositions established by the Supreme Court:

First, as a matter of substantive federal arbitration law, an arbitration provision is severable from the remainder of the contract. Second, unless the challenge is to the arbitration clause itself, the issue of the contract’s validity is considered by the arbitrator in the first instance. Third, this arbitration law applies in state as well as federal courts.

Buckeye Check Cashing, Inc. v. Cardegna, 546 U.S. 440, 445-46 (2006). In *Buckeye*, the respondents challenged the validity of the contract as a whole and argued that it was void *ab initio*. *Id.* at 443. They argued that under state law the arbitration provisions were not severable and thus were unenforceable. *Id.* at 446-48. The Supreme Court rejected their argument and held that “because respondents challenge the Agreement, but not specifically its arbitration provisions, those provisions are enforceable apart from the remainder of the contract. The challenge should therefore be considered by an arbitrator, not a court.” *Id.* at 446. The Supreme Court explicitly held that any “challenge to the validity of the contract as a whole, and not specifically to the arbitration clause, must go to the arbitrator.” *Id.* at 449. Because Wright challenges the validity of the contract as a whole, the dispute must go to arbitration.

It is further **ORDERED** that the following motions are **DENIED** as moot:

- Motion for a More Definite Statement Pursuant to Rule 12(E) (ECF No. 9);
- Motion for Summary Judgment on Counterclaim (ECF No. 16);
- Motion for Preliminary Injunction Staying Arbitration (ECF No. 17); and
- Respondent's Motion for Temporary Restraining Order Staying Arbitration (ECF No. 18).

/s/ Anita B. Brody
ANITA B. BRODY, J.

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